

STATE OF MICHIGAN
COURT OF APPEALS

ROY CRACCHIOLO,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED

August 6, 1999

No. 208042

Michigan Tax Tribunal,

LC No. 215668

Before: Markey, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Petitioner appeals by right from a judgment assessing him, inclusive of penalties, \$97,798.90 for sales, use, and withholding taxes accrued by his nephew's grocery business, East Detroit Foods, Inc. We reverse.

Petitioner argues that the Tax Tribunal erred in determining that respondent met its burden of proof to show that petitioner was a corporate officer of East Detroit Foods, Inc., and had control over, supervision of, or responsibility for the preparation or payment of the corporation's taxes, so as to render petitioner liable for the corporation's unpaid taxes. See MCL 205.27a(5); MSA 7.657(27a)(5). This Court reviews the decision of the Tax Tribunal "to determine whether it is authorized by law and whether it is supported by competent, material, and substantial evidence on the whole record." *Peterson v Treasury Dep't*, 145 Mich App 445, 449; 377 NW2d 887 (1985), citing Const 1963, art 6, § 28; *MCI Telecommunications Corp v Dep't of Treasury*, 136 Mich App 28, 30; 355 NW2d 627 (1984).

As an initial matter, contrary to respondent's arguments, the burden of proof lay with respondent. See *Peterson, supra*, 145 Mich App 450 ("In order to hold a person personally liable for a corporation's tax liability under this statute, the Department of Treasury must first show . . ." that the party is a corporate officer with the requisite control over tax payments or returns).

To establish that petitioner was liable for the taxes of East Detroit Foods, respondent was required to show that petitioner was an officer of East Detroit Foods, and either (1) that he had control over the making of corporation's tax returns or payments of taxes, or (2) that he supervised the making

of the tax returns or payments of taxes, or (3) that he was charged with responsibility for making the corporation's returns or payments. MCL 205.27a; MSA 7.657(27a).

With regard to petitioner's status as a corporate officer, respondent submitted the May 24, 1988 articles of incorporation; a May 24, 1988 certificate of assumed name; a 1988 application for sales, use, and withholding (SUW) tax registration; a May 5, 1991 power of attorney authorization; and an undated June 1988 SUW tax return. All these documents bore the petitioner's purported signature. Additionally, the certificate of assumed name bore the signature above the typed word "Chairman," the 1988 SUW tax application included the typed word "president" next to the signature, the 1991 power of attorney was signed under the statement "signed by a corporate officer . . ." and the June 1988 tax return bore a hand-printed "Pres." under the signature. Although petitioner testified that he never signed any of the above documents, the tribunal found that the documents contained petitioner's original signature. The tribunal also found that, "Petitioner's signature is again found . . . on the SUW Tax Return for the periods of May 1990 to September 1990 and November 1990 to February 1991, where Petitioner hand-wrote 'Pres.' under his signature."

To the extent that the tribunal found petitioner's original signature present on the 1990 to 1991 tax returns, the finding is not supported by competent, material, or substantial evidence. Petitioner testified that there existed a rubber stamp bearing a likeness of his signature, the creation or use of which he had never authorized; this rubber stamp was admitted into evidence at the Tax Tribunal hearing. Petitioner's nephew averred that he used the stamp, without petitioner's knowledge, on corporate documents and tax returns. Further, on their face, the 1990 to 1991 tax returns bear obviously stamped signatures. Indeed, respondent never argued that the 1990 to 1991 tax returns bore anything other than a stamped signature.

With regard to the remaining documents relied on by the Tax Tribunal, petitioner testified that he signed several documents at a 1988 meeting without knowledge of their contents. Because several of the above documents are closely related in time to the 1988 meeting, it may be inferred that they are documents that petitioner signed without knowledge of their content. The tribunal's conclusion that these documents bore petitioner's original signature is therefore supported by the evidence.

Nevertheless, while these documents may have borne petitioner's original signature, a genuine signature procured by fraud is a forgery and the subsequent holder of the forged document has no rights against the party whose name was forged. *Horvath v National Mortgage Co*, 238 Mich 354,358-360; 213 NW2d 202 (1927). Petitioner testified that he had no idea what he was signing at the 1988 meeting and that he had specifically expressed to his nephew that he did not wish to be involved with the corporation in any way. Other than the documents bearing his signature, petitioner in no way participated in any aspect of operating the corporation, and petitioner's hearing testimony evidences his difficulty with the English language. Respondent presented no evidence, other than the signed documents themselves, to counter the proofs that these signatures were fraudulently induced. So, while the signatures on the documents may genuinely have been petitioner's, because these signatures were obtained by fraud, they are deemed forgeries and were ineffective to bind petitioner as a corporate officer of East Detroit Foods. See *Horvath*, *supra* at 355. The tribunal's finding that petitioner was a corporate officer was therefore not supported by competent, material, and substantial evidence.

A similar analysis applies to the tribunal's finding on the requisite control element. *Peterson, supra*, 145 Mich App 450. The tribunal found that petitioner possessed the requisite control over the corporation's taxes based on the 1988 articles of incorporation, the 1988 certificate of assumed name, the 1988 SUW tax return application, the 1988 tax return, and the 1991 power of attorney authorization. Again, however, while petitioner apparently signed these documents, there was no evidence contradicting petitioner's testimony that he had no idea that he was signing documents that represented him either as a corporate officer of East Detroit Foods or as a party with control over the corporation's taxes.

Moreover, even if this Court considers petitioner's signature on the documents as prima facie evidence that petitioner possessed the requisite control over the corporation's taxes, petitioner, his nephew, and the corporation's accountant all testified that petitioner had no dealings whatsoever with the corporation. The accountant further testified that, on preparing the corporation's tax documents, he only sent them to the nephew for signature. This evidence effectively rebutted respondent's prima facie evidence that petitioner possessed the necessary control of the corporation's taxes.

Lastly, although the tribunal stated that it only considered the 1990 to 1991 tax returns in concluding that petitioner was a corporate officer, these documents would also fail to support the finding that petitioner controlled the corporation's taxes. The uncontroverted evidence was that petitioner did not authorize the stamped signatures on these documents. Consequently, the signatures on these tax returns were also forgeries, so they cannot serve to establish petitioner's responsibility for the corporation's tax returns or payments.

We reverse.

/s/ Jane E. Markey

/s/ E. Thomas Fitzgerald